

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/524,961	Applicant(s) WILSON, JEFFREY	
	Examiner SHANNON R. BROOKS	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/NICK CORSARO/
Supervisory Patent Examiner, Art Unit 2617

/Shannon R. Brooks/
Examiner, Art Unit 2617

The Applicant has stated that the Examiner has not applied the correct interpretation of the terms Mobile origination (MO) and Mobile Termination as cited in the claims. The examiner responded by providing a definition of MO and MT and advised the Applicant to amend the specification with a clarification of the terms because the applicant is obviously using a unique lexicography. The Applicant responded by amending the specification with a definition as required.

The Applicant is contending that "Accordingly, an MO message is a message originating from a mobile station sent in accordance with the Mobile Application Protocol (MAP) and which has not previously passed through an SMSC providing a store-and-forward function for the telecommunications network whereas an MT message is a message that has been converted from an MO message by the SMSC to a mobile terminated format."

During an interview the applicant contended that the primary reference, Bennett, uses the terms MO (and MT) in the conventional sense and consistent with the definition provided in the current application. The Applicant argued further that Paragraph [0066] of Bennett summarizes three "points of entry" to the mobile network; that the three points of entry are described as being through the internet via a PC or a mobile browser (WEB and WAP access) or through a MO device; and that Paragraph [0058] of Bennett makes clear the WEB and WAP users (12 and 14 in Figure 1) use HTTP and/or WML protocols; that MO messages by definition, however, only use MAP protocols. The Applicant argued further that user 16 of Figure 1 in Bennett is the only user sending MO messages; that user 16 also is the only user identified in the caption of Figure 1 as using MO ("MO SMS Phone to SMS Phone"), and the messages from user 16 are the only messages sent via the SMSC 26c. Paragraph [0054] of Bennett explains that messages may (ie., not always) be in MO format, and that routing of MO messages is via the device's home SMSC or originating SMSC (i.e., SMSC 26c in Figure 1). The Applicant further alleges it is clear that user 16 of Figure 1 is the only user sending MO messages; and that the use of the term MO in Bennett, therefore, is fully in line with Applicant's definition that MO messages are messages from a user to his SMSC. Thus, it is clear that Bennett uses the term MO in a manner that is consistent with that provided in the specification. The Examiner agreed to review all facts and to respond accordingly.

The examiner has concluded that the MAP is an SS7 protocol used to access the Short Message Service Center (SMSC). Transmission of short messages between the SMSC and the handset is provided by MAP. SMS-MT and SMS-MO messages can be sent by phone or software. Therefore, WEB and WAP messages of Bennett can also be MAP messages. The messages of Bennett are sent by phone and software and also sent between the SMSC and a handset. While it is true that only user 16 of Fig. 1 in Bennett is labeled as sending a MO message, this certainly does not preclude others from doing so.

Therefore, the rejection of Claims 1-15, 19-35, and 39-42 stands.